

# **Criminal Justice Committee**

**1st Meeting, 2023 (Session 6), Wednesday  
11 January 2022**

**Recent correspondence – virtual trials and  
access to court transcripts**

**Note by the clerk**

## **Purpose of the paper**

1. This paper invites Members to consider correspondence received by the Committee (see **Annex**) on the issue of virtual trials and the current practice of charging fees for access to court transcripts.

## **Action**

2. **Members are invited to consider the correspondence and any suggested follow-up and discuss what action, if any, they wish to take.**
3. **In addition, Members are asked to agree to provide copies of the correspondence to Rape Crisis Scotland, Scottish Women's Aid and Victim Support Scotland whom the Committee has been liaising with on these matters.**

**Clerks to the Criminal Justice Committee  
January 2023**

**Letter from the Cabinet Secretary**

16 December 2022

Dear Convener

Thank you for your letter of 15 November in relation to virtual trials and access to court transcripts.

During its scrutiny of the then Coronavirus (Recovery and Reform) (Scotland) Bill, the Committee paid particular attention to the topic of virtual trials. The Committee's Stage 1 report on the Bill noted that it had heard differing views on virtual hearings and trials and emphasised that a greater evidence base should be developed before they were made a permanent feature of Scotland's justice system. I continue to agree with that approach.

I understand victims' organisations' frustration that, despite the significant work justice partners have put into developing a model for virtual summary domestic abuse trials, only a small number of such trials have been held. However, I note that the measure proposed in your letter as a way of increasing the use of virtual trials is actually already provided for in the Coronavirus (Recovery and Reform) (Scotland) Act 2022 ('the 2022 Act').

It might be helpful if I set out what is possible under the 2022 Act, before touching on the work underway to develop any permanent legislative basis for virtual trials.

Firstly, it is important to note that the legislation does not directly provide for 'fully virtual trials'. Instead, it provides for individuals to take part in a trial by virtual means if they are directed to do so by the court. That could result in a fully virtual trial, if the court directs all parties and participants to take part virtually, or in a 'hybrid trial', if some people are physically in court while others participate virtually.

A court can direct that a person attends virtually on its own accord, or on a motion of a party. In practice this means that any party in a case may make a submission to the court requesting that the trial be held virtually, for the court to consider. In addition, when a court is considering whether to direct that a trial is held virtually, it must give all parties an opportunity to make representations. However, while it will take any representations into account, the decision on mode of attendance is ultimately for the court: it may direct that all parties attend a trial virtually if it is satisfied that this would not prejudice the fairness of proceedings or otherwise be contrary to the interests of justice.

To support the original pilot of virtual summary domestic abuse trials, in 2020 the Lord Justice General issued a practice note which has the effect that the parties must agree the case is suitable for trial by electronic means in order to proceed. The content of practice notes is a matter for the Lord Justice General – however I would note that the 2022 Act itself does not require all parties to agree to a case

proceeding virtually, because, as I have outlined, the decision is for the court. I would suggest that you contact the Scottish Courts and Tribunals Service for detail on how the approach in the practice note has been implemented, as well as for operational information on numbers of fully virtual trials held.

You asked whether any guidance has been issued on when it is appropriate to excuse people from physically attending criminal trials. I am not aware of any such guidance, but again, this would be a matter for the Lord Justice General. Under the 2022 Act, when deciding whether to direct someone to attend a criminal court virtually, the court must have regard to any guidance issued by the Lord Justice General.

As you know, the provisions relating to virtual proceedings in the 2022 Act are due to expire in November 2023, but can be extended (until November 2025 at the latest) if Parliament agrees. We have begun to gather evidence to inform the seeking of any extension of the existing provisions, as well as the development of any permanent proposition for virtual criminal proceedings.

In our consultation on *Improving Victims' Experiences of the Justice System*, which ran between May and August this year, we asked a series of questions on the use of virtual trials, including specifically on their use for summary domestic abuse cases. These questions were designed to help us build a fuller sense of the perceived benefits of, and concerns about, the use of virtual trials, and the circumstances in which people feel it is most appropriate for them to be used. The consultation responses are currently being independently analysed, and will be published in due course. The Scottish Government is also funding research on the impact of the use of virtual hearings in a range of civil cases, which is being carried out by Ipsos Mori and the University of Glasgow, and is due to be completed in Spring 2023. We will consider whether any of the findings of that research are relevant for criminal cases.

On the wider issue of the provision of court transcripts, and as outlined previously, there are several matters that we would need to consider with Scottish Courts and Tribunals Service before we could look at any potential need for legislative change. As you would expect, and subject to those considerations, that could also include the need to consult more widely. I can assure the Committee that they will be kept informed as we make progress.

**Keith Brown**